

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

Swapna Kale,
individually and on behalf of all others similarly situated,
Plaintiff,

-v.-

ProCollect Inc.,
and John Does 1-25.

Defendant(s).

Case No: 2:20-cv-02776

**CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL**

Plaintiff Swapna Kale, ("Plaintiff"), a Tennessee resident, brings this Class Action Complaint by and through her attorneys, Stein Saks, PLLC, against Defendant ProCollect Inc. ("ProCollect"), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff's counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff's personal knowledge.

INTRODUCTION/PRELIMINARY STATEMENT

1. The Fair Debt Collection Practices Act ("FDCPA") was enacted in 1977 in response to the "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. §1692(a). At that time, Congress was concerned that "abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and to invasions of individual privacy." *Id.* Congress concluded that "existing laws...[we]re inadequate to protect consumers," and that "the effective collection of debts" does not require "misrepresentation or other abusive debt collection practices." 15 U.S.C. §§ 1692(b) & (c).

2. The purpose of the Act was not only to eliminate abusive debt collection practices, but also to ensure "that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate, *Id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692 et. seq. The Court has pendent jurisdiction over the State law claims in this action pursuant to 28 U.S.C. § 1337(a).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1331(b)(2) as this is where the Plaintiff resides as well as where a substantial part of the events or omissions giving rise to the claim occurred.

NATURE OF THE ACTION

5. Plaintiff brings this class action on behalf of a class of Tennessee consumers under § 1692 et seq. of Title 15 of the United States Code, also known as the Fair Debt Collections Practices Act ("FDCPA"), and

6. Plaintiff is seeking damages and declaratory relief.

PARTIES

7. Plaintiff is a resident of the State of Tennessee, County of Shelby, residing at 976 Schilling Row Ave, Apt 304, Piperton, TN 38017.

8. Defendant ProCollect is a "debt collector" as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA with an address at 12170 N. Abrams Rd., Suite 100 Dallas, Texas 75243.

9. Upon information and belief, Defendant ProCollect is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

10. John Does 1-25, are fictitious names of individuals and businesses alleged for the purpose of substituting names of Defendants whose identities will be disclosed in discovery and should be made parties to this action.

CLASS ALLEGATIONS

11. Plaintiff brings this claim on behalf of the following class, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

12. The Class consists of:

- a. all individuals with addresses in the State of Tennessee;
- b. to whom Defendant ProCollect sent an initial letter;
- c. attempting to collect a consumer debt;
- d. claiming that the listed balance may be inaccurate or may increase;
- e. without providing the amount of such inaccuracy or increase or a way to calculate it;
- f. which letter was sent on or after a date one (1) year prior to the filing of this action and on or before a date twenty-one (21) days after the filing of this action.

13. The identities of all class members are readily ascertainable from the records of Defendant and those companies and entities on whose behalf it attempts to collect and/or has purchased debts.

14. Excluded from the Plaintiff Class are the Defendant and all officers, members, partners, managers, directors and employees of the Defendant and their respective immediate families, and legal counsel for all parties to this action, and all members of their immediate families.

15. There are questions of law and fact common to the Plaintiff Class, which common issues predominate over any issues involving only individual class members. The principal issue is whether the Defendant's written communications to consumers, in the form attached as Exhibit A, violate 15 U.S.C. §§ 1692e, 1692f, and 1692g.

16. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories. The Plaintiff will fairly and adequately protect the interests of the Plaintiff Class defined in this complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor counsel have any interests which might cause them not to vigorously pursue this action.

17. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- a. **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges, that the Plaintiff Class defined above is so numerous that joinder of all members would be impractical.
- b. **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff Class and those questions predominate over any questions or issues involving only individual class members. The principal issue is whether the Defendant's written communications to consumers, in the form **attached as Exhibit A** violate 15 U.S.C. § 1692e, 1692f, and 1692g.

- c. **Typicality:** The Plaintiff's claims are typical of the claims of the class members. The Plaintiff and all members of the Plaintiff Class have claims arising out of the Defendants' common uniform course of conduct complained of herein.
- d. **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are adverse to the absent class members. The Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor her counsel have any interests which might cause them not to vigorously pursue the instant class action lawsuit.
- e. **Superiority:** A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

18. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

19. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify a class(es) only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

FACTUAL ALLEGATIONS

20. Plaintiff repeats the allegations above as if set forth here.
21. On a date better known to Defendant, Plaintiff allegedly incurred a debt to non-party Centennial Gardens Apartments.
 22. This alleged debt was incurred as a financial obligation that was primarily for personal, family or household purposes and is therefore a “debt” as that term is defined by 15 U.S.C. § 1692a (5), specifically a personal apartment rental.
 23. Centennial Gardens Apartments is a “creditor” as defined by 15 U.S.C. §1692a (4).
 24. Upon information and belief, Centennial Gardens Apartments then contracted with Defendant ProCollect to collect this alleged debt.
 25. Defendant collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and internet.

Violation – the April 21, 2020 Letter

26. On or around April 21, 2020, Defendant sent the Plaintiff an initial collection letter. A true and accurate copy of this letter from Defendant is attached as **Exhibit A**.
27. The letter lists the amount due as \$233.39*.
28. Towards the bottom of the letter its states:

*Your agreement with the original creditor, or other applicable state law, may allow ProCollect to charge collection agency fees. If you have not already been put on notice of any applicable fee, this is your notice that a failure to pay the Amount Due within the applicable deadline set out in the agreement with the original creditor or state law, may result in ProCollect assessing collection agency fees allowed by such agreement or state law.

29. No amounts are listed for these “collection agency fees”.
30. No formula is provided for how to calculate these “collection agency fees”.

31. No deadline is given for when these fees might be assessed.
32. The consumer is therefore unable to determine the actual total balance due.
33. This letter lacks the proper notice required by 15 U.S.C. § 1692g.
34. In addition, upon information and belief, Defendant does not intend to collect “collection agency fees”.
35. The mention of these fees is just a scare tactic and misleads the consumer into paying the alleged debt.
36. As a result of Defendant's false and unfair debt collection practices, Plaintiff has been damaged.

COUNT I
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692e *et seq.*

37. Plaintiff repeats the allegations above as if set forth here.
38. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.
39. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.
40. Defendant violated said section by:
 - a. Failing to truthfully represent the amount of the debt in the lawsuit pursuant to § 1692d (2)(A);
 - b. Failing to provide the notices required in an initial collection letter in violation of §1692e (10);
 - c. Threatening to take action (increasing the debt amount) that cannot legally be taken or that is not intended to be taken in violation of § 1692e (5).

41. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692e et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

COUNT II
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692f *et seq.*

42. Plaintiff repeats the allegations above as if set forth here.

43. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692f.

44. Pursuant to 15 U.S.C. §1692f, a debt collector may not use any unfair or unconscionable means in connection with the collection of any debt.

45. Defendant violated this section by failing to state the amount of debt and threatening that the amount of the debt may increase even though it would not actually increase.

46. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692f et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

COUNT III
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692g *et seq.*

47. Plaintiff repeats the allegations above as if set forth here.

48. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692g.

49. Pursuant to 15 USC §1692g:

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the

following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –

1. The amount of the debt...

50. Defendant violated 15 U.S.C. § 1692g by:

- a. Failing to provide the actual amount of the debt.

51. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692g et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

DEMAND FOR TRIAL BY JURY

52. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Swapna Kale individually and on behalf of all others similarly situated demands judgment from Defendant ProCollect Inc. as follows:

- i. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative, and Yaakov Saks, Esq. as Class Counsel;
- ii. Awarding Plaintiff and the Class statutory damages;
- iii. Awarding Plaintiff and the Class actual damages;
- iv. Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
- v. Awarding pre-judgment interest and post-judgment interest; and

vi. Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: October 26, 2020

Respectfully submitted,

Stein Saks, PLLC

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